

TITLE 35: CHAPTER 7 - Pesticide Law

35-7-350. Short titles.

This act (§§ 35-7-350 through 35-7-372) shall be known and may be cited as the “Wyoming Environmental Pesticide Control Act of 1973”.

35-7-351. Enforcing agency.

This act [§§ 35-7-350 through 35-7-372] shall be administered by the department of agriculture of the state of Wyoming, hereinafter referred to as the “department”.

35-7-352. Declaration of purpose.

The legislature hereby finds that pesticides and devices are valuable to our state’s agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests, and it is essential to the public health and welfare that they be regulated closely to prevent adverse effects on human life and the environment. The purpose of this act [~ 35-7-350 through 35-7-372) is to regulate, in the public interest, the labeling, distribution, storage, transportation, disposal, use and application of pesticides to control pests. New pesticides are continually being discovered or synthesized which are valuable for the control of pests, and for use as defoliants, desiccants, plant regulators, and related purposes. The dissemination of accurate scientific information as to the proper use or nonuse, of any pesticide, is vital to the public health and welfare and the environment both immediate and future. Therefore, it is deemed necessary to provide for registration of pesticides and devices.

35-7-353. Board of certification.

A board of certification is established consisting of the director of the department of agriculture, and a member of the Wyoming weed and pest council and a University of Wyoming weed or pest specialist to be appointed by the governor. The governor may remove any member he appoints as provided in W.S. 9-1-202.

35-7-354. Definitions.

(a) “Applicator” or “operator” means:

- (i) “Certified applicator” means any individual who is certified by the director as being competent with respect to the use and handling of pesticides, or of the use and handling of the pesticide or class of pesticides covered by the individual’s certification;
- (ii) “Commercial applicator” means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (a) (iii) of this subsection;
- (iii) “Private applicator” means any certified applicator who uses or supervises the use of any restricted use pesticide which is restricted to use by certified applicators and only for purposes of producing any agricultural commodity on property owned by him or his

employer or under his control or (is applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(b) "Board of agriculture" means that body established by law under W.S. 11-2-102.

(c) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man, or bacteria, virus, or other microorganism on or in living man or other living animals) but does not include equipment used for the application of pesticides when sold separately therefrom.

(d) "Pesticide" means:

(i) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests;

(ii) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(iii) Any substance or mixture of substances intended to be used as a spray adjuvant.

(e) "Restricted use pesticide" means any pesticide product, the label of which states "restricted use" as required for registration by the environmental protection agency under the federal Insecticide, Fungicide and Rodenticide Act of 1972, as amended.

35-7-355. Director to administer and enforce provisions; board of certification to adopt regulations.

The director of the department of agriculture shall administer and enforce the provisions of this act [~ 35-7-350 through 35-7-372] and regulations issued thereunder. The board of certification may issue regulations after a public hearing following due notice to all interested persons in conformance with the provisions of the Wyoming Administrative Procedure Act to carry out the provisions of this act. Regulations may prescribe methods to be used in the application of pesticides, may prescribe standards for the classification and certification of applicators of pesticides, and may require certification, licensing, payment of reasonable fees for licensing or certification, submission of information, and passing of examinations by applicators of pesticides. Where the board of certification finds that regulations are necessary to carry out the purpose and intent of this act, the regulations may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary. The department may issue licenses. Notwithstanding the provisions of W.S. 35-7-354(e), the board of agriculture, by regulation, following a hearing and pursuant to the Wyoming Administrative Procedure Act, may declare a specific pesticide or pesticide use a "restricted use pesticide", but only following a recommendation of the board of certification, and a finding of fact, in a public hearing conducted by the board of certification, that unreasonable adverse effects on the environment, including man, pollinating insects, animals, crops, wildlife and lands, other than pests, may reasonably occur.

35-7-356. Registration.

(a) Every pesticide or device which is distributed within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the department of agriculture by its manufacturer or formulator subject to the provisions of this act [~ 35-7-350 through 35-7-372]. The registration shall be renewed annually prior to December 31 of each year but not if a pesticide or device is shipped from one plant or warehouse to another plant or warehouse as a constituent part to make a pesticide or device which is registered under the provisions of this act, if the pesticide or device is not sold and if the container thereof is plainly and conspicuously marked "For Experimental Use Only", together with the manufacturer's name and address, or if a written permit has been obtained from the department to sell the specific pesticide or device for experimental purposes subject to restrictions and conditions set forth in the permit.

(b) The applicant for registration shall file a statement with the department which shall include:

- (i) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;
- (ii) The name of the pesticide or device;
- (iii) Other necessary information required for completion of the department's application for registration form;
- (iv) The use classification as provided in the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. § 136 et seq.] when required by regulations under this act.

(c) The director may require a full description of the tests made and the results thereof upon which the claims are based on any pesticide or device on which restrictions are being considered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide or device was registered or last registered. The director may prescribe other necessary information by regulation.

(d) Every registrant of pesticides or device shall pay an annual registration fee of seventy-five dollars (\$75.00) each for every product registered. All registrations shall expire on December 31 of each year, following the date of the registration, and may thereupon be renewed for successive periods of twelve (12) months upon payment of the proper fee. Funds collected pursuant to this section shall be deposited in the general fund and may be appropriated by the legislature for programs authorized by W.S. 11-2-202(a)(v), 11-5-113, 11-5-303, 11-16-105 (a)(v) and 35-7-350 through 35-7-374.

(e) Any registration approved by the director and in effect on December 31 for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until such time as the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provisions of W.S. 35-7-358. Forms for registration shall be mailed to registrants at least thirty (30) days prior to the due date.

(f) If it appears to the director that the composition of the pesticide or device is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material

required to be submitted comply with the requirements of this act [§§ 35-7-350 through 35-7-372] he shall register the pesticide.

35-7-357. Experimental use permits.

(a) Any person may apply to the director of the department of agriculture for an experimental use permit for a pesticide. The director may issue an experimental use permit if he determines that the applicant needs the permit in order to accumulate information necessary to register a pesticide under this act [~ 35-7-350 through 35-7-372] . An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

(b) Use of a pesticide under an experimental use permit shall be under the supervision of the director, and shall be subject to such terms and conditions and be for such period of time as the director may prescribe in the permit.

(c) The director may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

35-7-358. Refusal to register; cancellation; suspension; legal recourse.

(a) If it does not appear to the director of the department of agriculture that the pesticide or device is such as to warrant the proposed claims for it or if the pesticide or device and its labeling and other material required to be submitted do not comply with the provisions of this act or regulations adopted thereunder, he shall notify the applicant of the manner in which the pesticide or device, labeling, or other material required to be submitted fails to comply with the provisions of this act so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of notice, the applicant does not make the required changes the director may refuse to register the pesticide or device. The applicant may request a hearing as provided for in the Wyoming Administrative Procedure Act.

(b) The director, when he determines that the pesticide or device or labeling does not comply with the provisions of the act or the regulations adopted thereunder, may cancel the registration of a pesticide or device after a hearing in accordance with the provisions of the Wyoming Administrative Procedure Act.

(c) The director, when he determines that there is an imminent hazard, may suspend on his own motion, the registration of a pesticide in conformance with the provisions of the Wyoming Administrative Procedure Act.

(d) Any person who will be adversely affected by an order under this section may obtain judicial review in accord with the Wyoming Administrative Procedure Act.

35-7-359. Classification of licenses.

(a) Licenses shall include but are not limited to:

(i) Commercial applicator license;

(ii) Private applicator license.

35-7-360. Liability for damage; service of process.

(a) Repealed by Laws 1979, ch. 91, § 3.

(b) Repealed by Laws 1979, ch. 91, § 3.

(c) Nothing in this act (§§ 35-7-350 through 35-7-372) shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of this act.

(d) Before the director shall issue a pesticide applicator's license to a nonresident to apply pesticides in this state, each nonresident pesticide applicator shall appoint the director as his attorney to receive services of legal process issued against the pesticide applicator in this state. The appointment, effect of appointment, and procedures for service of process shall be as provided by W.S. 26-3-121 and 26-3-122.

35-7-361. Inspection of equipment.

The director may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by regulation.

35-7-362. Reciprocal agreement.

The director may issue a license or certification on a reciprocal basis with other states without examination to a nonresident who is licensed, or certified, in another state substantially in accordance with the provisions of this act (§§ 35-7-350 through 35-7-372) but financial security as provided for in W.S. 35-7-360 shall be submitted by nonresident commercial applicators.

35-7-363. Exemptions.

(a) The provision of W.S. 35-7-355 relating to licenses and requirements for their issuance shall not apply to any private applicator applying pesticides for himself or with ground equipment or manually for his neighbors, except as to specific regulations as to the use of restricted pesticides and certification qualifications for private applicators, if:

(i) He operates farm property or operates and maintains pesticide application equipment primarily for his own use;

(ii) He is not engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and he does not publicly hold himself out as a pesticide applicator.

(b) The word "device" shall not be construed to mean fly swatter, butterfly net, or any mechanical contrivance used to trap or kill insects or rodents.

35-7-364. Discarding and storing of pesticides and pesticide containers.

No person shall discard, transport, or store any pesticide or pesticide containers in such a

manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any waterway in a way harmful to any wildlife therein. The board of certification may promulgate rules and regulations governing the discarding and storing of such pesticides or pesticide containers.

35-7-365. Subpoenas.

The director may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records in the state in any hearing affecting the authority or privilege granted by a license, registration, or permit issued under the provisions of this act [SS 35-7-350 through 35-7-372]

35-7-366. Penalties.

(a) Any person violating any provision of W.S. 35-7-350 through 35-7-375 or regulation thereunder is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500.00) or imprisoned in the county jail for not more than one (1) year, or both, for the first offense, and upon conviction for a subsequent offense shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned in the county jail for not more than one (1) year, or both. Any offense committed more than three (3) years after a previous conviction shall be considered a first offense.

(b) The director may bring an action to enjoin the violation or threatened violation of any provision or any regulation made pursuant to W.S. 35-7-350 through 35-7-375 in a court of competent jurisdiction of the county in which the violation occurs or is about to occur. The action may be initiated by the attorney general or the district attorney for the county in which the violation has or is about to occur.

(c) No state court shall allow the recovery of damages from administrative action taken if the court finds that there was probable cause for such action.

35-7-367. Enforcement.

(a) The sampling and examination of pesticides or devices shall be made under the direction of the director for the purpose of determining whether they comply with the requirements of this act. The director is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices. If it appears from such examination that a pesticide or device fails to comply with the provisions of this act or regulations adopted thereunder, and the director contemplates instituting criminal proceedings against any person, the director shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity within a reasonable time to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the director, it appears that the provisions of the act or regulations adopted thereunder have been violated by such person, the director shall refer a copy of the results of the analysis or the examination of such pesticide or device to the district attorney for the county in which the violation occurred.

(b) Nothing in this act shall be construed as requiring the director to report minor violations of this act for prosecution or for the institution of condemnation proceedings when he believes that the public interest will be served best by a suitable notice of warning in writing.

(c) For the purpose of carrying out the provisions of this act the director may enter upon any public or private premises at reasonable times, in order:

- (i) To have access for the purpose of inspecting any equipment subject to this act and such premises on which the equipment is kept or stored;
- (ii) To inspect lands actually or reported to be exposed to pesticides;
- (iii) To inspect storage or disposal areas;
- (iv) To inspect or investigate complaints of injury to humans or land;
- (v) To sample pesticides being applied or to be applied.

(d) If the director is denied access to any land where access was sought for the purposes set forth in this act, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such lands for the stated purposes. The court shall with probable cause upon such application issue the search warrant for the purposes requested.

(e) The director may bring an action to enjoin the violation or threatened violation of any provision of this act or any rule made pursuant to this act in the district court of the county in which such violation occurs or is about to occur.

35-7-368. Cooperation.

The director is authorized to cooperate with and enter into agreements with any other agency of this state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this act ESS 35-7-350 through 35-7-372] and securing uniformity of regulation.

35-7-369. Disposition of funds.

All moneys received by the department under the provisions of this act ES5 35-7-350 through 35-7-3721 shall be deposited into the treasury of the state to the credit of the general fund.

35-7-370. Severability.

If any provision of this act [SS 35-7-350 through 35-7-372] is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this act and applicability thereof to other persons and circumstances shall not be affected thereby.

35-7-371. Prior liability.

The enactment of this act ESS 35-7-350 through 35-7-3721 shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this act becomes effective.

35-7-372. Jurisdiction; repeals.

Jurisdiction in all matters pertaining to the registration, distribution, transportation and disposal of pesticides and devices is by this act [SS 35-7-350 through 35-7-3721 vested exclusively in the director and board of certification and all acts and parts of acts inconsistent with this act are hereby expressly repealed.

35-7-373. Registration of aircraft.

(a) Any person engaged in the activity or business of applying pesticides utilizing any type of aircraft shall register each aircraft annually with the Wyoming department of agriculture, on a printed form provided by the department. The registration shall include the following:

- (i) Manufacturer, model and type of aircraft;
- (ii) Identification number assigned to the aircraft;
- (iii) Owner of the aircraft; and
- (iv) User of the aircraft if different from the owner.

(b) The fee authorized by W.S. 11-1-104 shall be charged to each person registering aircraft. Aircraft shall be registered on or before April 1 of each year.

35-7-374. Prohibited acts.

(a) It is unlawful for any person to:

- (i) Detach, alter, deface or destroy, in whole or in part, any labeling prior to proper disposal of the pesticide containers;
- (ii) Refuse to keep any records as required by the director by regulation or to refuse to allow the inspection of such records by the director during normal working hours;
- (iii) Make available for use, or to use, any restricted pesticide classified for restricted use for some or all purposes, except by or under the direct supervision of a certified applicator;
- (iv) Use any registered pesticide in a manner inconsistent with its labeling which means to use any registered pesticide in a manner not permitted by the labeling, or not authorized by the director under a special local need registration, an experimental use permit or an emergency exemption, provided that this paragraph does not include:
 - (A) Applying a pesticide at any dosage, concentration or frequency less than that specified on the labeling;
 - (B) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling;
 - (C) Employing any method of application not prohibited by the labeling; or
 - (D) Mixing a pesticide or pesticides with a fertilizer when the mixture is not

prohibited by the labeling.

(v) To falsify any records required by the director by regulation;

(vi) To falsify any application, examination or affidavit for certification or license;

(vii) Other than certified applicators or persons working under their direct supervision to use restricted use pesticides;

(viii) To use restricted use pesticides inconsistent with the applicator category of certification.

(b) If the director finds that the violation occurred despite the exercise of due care or did not cause significant harm to another person, to health or to the environment, he shall issue a warning in lieu of prosecution.

35-7-375. Required notification of pesticide application on or within school buildings.

(a) Any commercial applicator licensed under W.S. 35-7-359 or any other person shall provide notification required by this section of the application of any pesticide as defined under W.S. 35-7-354(d) which is applied on or within any building or other real property used by a school district primarily for the education of students, including any property used by the district for student activities or playgrounds. Notice under this subsection shall be provided to the district not less than seventy-two (72) hours prior to application and the district shall further notify students, teachers and staff. All notices distributed under this subsection shall be marked with a distribution date and include information indicating date of application, location of application or treatment area, pest to be controlled, name and type of pesticide to be applied and a contact for additional information. All notices distributed under this subsection shall be retained by the school or school district for two (2) years.

(b) In addition to notice required under subsection (a) of this section, the licensed commercial applicator or other school employee applying pesticides shall post signs on the school building or property stating the date of application, the location of the application or treatment area, the name and type of the pesticide to be applied and a contact for additional information. Upon request, the licensed commercial applicator or other school employee shall provide information on how to obtain additional information on the pesticide. Not less than twelve (12) hours before application of pesticides within school buildings, signs shall be posted at main entrances to school buildings and at the entrances to the specific application area within buildings. If pesticide application is made outdoors to any area adjacent to a school building or on property used by the district for student activities or playgrounds, signs shall be posted immediately adjacent to the treated area and at the entrance to the district property. The signs shall remain posted for seventy-two (72) hours.

(c) Anti-microbial pesticides defined under W.S. 35-7-354(d), such as disinfectants and sanitizers used by school employees for cleaning purposes and insect or rodent bait stations of the type available for home use are exempted from the notification and posting requirements specified in subsections (a) and (b) of this section.